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OLL 85-0341/1
13 MAR 1985

MEMORANDUM FOR: Director of Central Intelligence

FROM: Director, Office of Legislative Liaison

SUBJECT: Omnibus Intelligence and Security
Improvements Act

1. Attached for your review and comment is our proposed response to H.R. 1082, the Omnibus Intelligence and Security Improvements Act, which was recently introduced by Representative Bob Stump, Ranking Minority Member, HPSCI. In a letter addressed to Robert McFarlane, which also was forwarded to other agency heads with an interest in this legislation, Mr. Stump requested the Administration's formal views on the various provisions contained in this bill. Rather than attempting to prepare one coordinated response, OMB has decided to permit each individual agency to submit comments to Mr. Stump following OMB clearance of the proposed response. After your review and approval, we will then submit this response to OMB where it will be reviewed by other interested intelligence agencies.

2. As the title of the bill implies, the bill itself addresses a number of positive steps intended to improve our intelligence, counterintelligence and security capabilities. Its ten titles include provisions addressing expenditures in excess of program authorizations (Title I); pretrial notification of a defendant's intention to use a "CIA defense" in criminal proceedings (Title II); improved access by the FBI to bank records and tax return information for counterintelligence investigations (Title III); leaks by Federal employees (Title IV); federal polygraph and prepublication review use (Title V); application of the death penalty to treason and espionage offenses (Title VI); expedited naturalization for individuals making significant contributions to the national security (Title VII); amendments to the Intelligence Identities Protection Act (Title VIII) and Foreign Intelligence Surveillance Act (Title IX); and the undertaking by FBI of a comprehensive survey of the personnel and physical security practices of the Congress (Title X).

3. Mr. Stump's intention is to attach some of these individual titles to the 1986 Intelligence Authorization Bill and to other appropriate vehicles receiving fast track consideration. As you will note, certain of the above proposals addressing leaks and defector citizenship already are included in the latest draft of this year's authorization bill, although there are significant differences between our draft and the bill's provisions in this regard.

4. I will be happy to discuss our proposed response with you at your convenience.

/s/Charles A. Briggs

Charles A. Briggs

Attachment:
As Stated

Distribution:

Orig. - Addressee

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STAT OLL:LEG dpt:(12 Mar 85)

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DDCI ret'd
letter to OCL
for changes to
be made

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19	C/PPS/DO				
20	Counsel/DO		X		
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SUSPENSE				21 Feb 85	

Remarks To 14: Working with the Ex Dir, please pull together Agency reactions to this bill for review by all concerned.

14 Feb 85
Date

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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
WASHINGTON, DC 20515

Executive Registry

85- 496

February 8, 1985

The Honorable Robert C. MacFarlane
Assistant to the President
for National Security Affairs
The White House
Washington, D.C. 20500

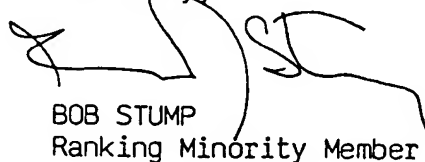
Dear Mr. MacFarlane:

On February 7, 1985, I introduced in the House of Representatives H.R. 1082, the Omnibus Intelligence and Security Improvements Act. The bill is intended to improve significantly the ability of the United States Government to protect the security of this Nation. The bill would take a number of positive steps to improve our intelligence, counterintelligence and security capabilities. The bill also addresses some difficulties encountered in such matters in the past.

I would appreciate very much the benefit of your thoughts and ideas on this legislation and on other intelligence-related matters which you believe the Congress ought to consider in the current session. Only by forging an effective executive-legislative partnership will we be able to make legislative advances which will contribute to improved security for the Nation.

I am forwarding a copy of this letter and of H.R. 1082 to the heads of departments and agencies which may have an interest in the legislation. In addition to any informal comments you may have, I would appreciate greatly receiving the Administration's formal views on the various provisions in H.R. 1082.

Sincerely,


BOB STUMP
Ranking Minority Member

Enclosure: H.R. 1082

cc: The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of Commerce
The Director, Office of Management and Budget
✓ The Director of Central Intelligence

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OMNIBUS INTELLIGENCE AND SECURITY IMPROVEMENT ACT

SUMMARY

Title I--Recurring Intelligence Authorization Provision Codification Act

Title I of the bill codifies as permanent law a provision which has been included in past fiscal years in the intelligence authorization acts. The provision ensures notification to appropriate committees of Congress of expenditures by U.S. intelligence agencies in excess of program authorizations. Placing the provision permanently in the National Security Act of 1947 avoids the potential problem of lapse of the provision between the end of a fiscal year and the enactment of an intelligence authorization act for the following fiscal year.

Title II--Intelligence or Law Enforcement Defense Pretrial Notification Act

Title II of the bill amends the Federal Rules of Criminal Procedure to require a defendant to give notice prior to trial if he intends to claim in his defense that he was, or believed he was, acting on behalf of a federal law enforcement or intelligence agency at the time of the alleged offense. In recent years, the number of cases in which defendants have falsely claimed at trial to have been working secretly for a U.S. intelligence or law enforcement agency has increased dramatically. Title II of the bill would eliminate the element of surprise and allow for a full and fair trial of such claims.

Title III--Foreign Counterintelligence Investigation Improvements Act

Title III of the bill will improve the ability of the United States to defend itself against espionage by the agents of hostile foreign powers. Title III amends the Right to Financial Privacy Act to improve Federal Bureau of Investigation access to bank records for counterintelligence investigations. Title III also amends the Internal Revenue Code to give the FBI access to the tax return and return information of agents of foreign powers. Finally, Title III amends the State Department Basic Authorities Act to ensure that travel within the United States by foreign diplomatic personnel to high technology areas is clearly consistent with U.S. national security.

Title IV--Federal Employee Unauthorized Disclosure of Classified Information Act

Title IV of the bill amends title 18 of the United States Code to establish as a federal crime the intentional unauthorized disclosure of classified information by a federal employee. Currently, such disclosures are per se criminal offenses only if the classified information concerns communications intelligence and cryptographic information, the identities of covert U.S. intelligence agents, or atomic energy restricted data. Title IV will establish criminal penalties for unauthorized disclosure of the other types of information whose disclosure can reasonably be expected to cause damage to the national security. By virtue of Title IV, disclosure of U.S. national security secrets by U.S. personnel, who have voluntarily assumed positions of high national trust, would be subject to criminal penalties.

Title V--Federal Polygraph and Prepublication Review Limitation Act

Title V of the bill would regulate the use of polygraph examinations and prepublication review requirements by the United States government with respect to federal employees. The legislation restricts substantially the use of these security techniques, while carefully preserving their use in sensitive intelligence, security and special access programs and, in certain circumstances, in law enforcement investigations.

Title VI--Espionage and Treason Capital Punishment Procedures Act

Title VI of the bill amends title 18 of the United States Code to establish constitutional procedures to implement the existing death penalty provisions of statutes punishing espionage and treason. In 1972, the Supreme Court struck down the application of the death penalty because of the way in which it was applied. Title VI of the bill will provide constitutional procedures to permit imposition of the death sentence in appropriate cases for espionage and treason.

Title VI provides for a separate sentencing hearing, after conviction for espionage or treason, to determine whether to impose a sentence of death. The jury, or, if the defendant and the government so agree, the judge, will consider a number of mitigating and aggravating factors to determine whether, in the particular facts and circumstances of the case, the death sentence is warranted. Title VI also provides expedited procedures for appellate court review of a sentence of death.

Title VII--Foreign Intelligence Source Improvement Act

Title VII of the bill amends the Central Intelligence Agency Act of 1949 to permit the President to naturalize a maximum of five persons per year admitted to the United States for permanent residence under the existing provisions of the CIA Act because of their critical contributions to the security of the United States. Title VII would enable the United States to use the potential for U.S. citizenship as a strong inducement to highly-placed individuals in hostile foreign countries to become U.S. intelligence sources.

Title VIII--Intelligence Identities Protection-Related Amendments

Title VIII of the bill amends the existing provision of title 5 of the United States Code which terminates the federal annuity benefits of a federal employee convicted of certain national security crimes. Title VIII would include offenses under section 601 of the National Security Act of 1947, which prohibits disclosure of the identities of covert U.S. intelligence agents, among those annuity-disqualifying crimes.

Title VIII also amends chapter 119 of title 18 of the United States Code, which, among other things, provides for court orders for interception of wire and oral communications in investigations of certain national security crimes. Title VII would include offenses under section 601 of the National Security Act of 1947, which prohibits disclosure of the identities of covert U.S. intelligence agents, among those crimes for which such interception orders could be obtained.

Title IX--Foreign Intelligence Surveillance Amendments

Title IX amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to extend from twenty-four hours to forty-eight hours the period during which emergency foreign intelligence electronic surveillances may be conducted on the authority of the Attorney General. Title IX also amends the FISA to permit retention and dissemination of communications constituting threats of death or serious bodily harm incidentally overheard while conducting electronic testing, training or security countermeasures in accordance with the FISA. Finally, Title IX clarifies the relationship between the authority of the government to conduct law enforcement surveillances under chapter 119 of title 18 of the United States Code and its authority to conduct foreign intelligence electronic surveillances under the FISA, by making clear that the government may proceed under either authority when both apply.

Title X--Congressional Security Survey Act

Title X provides for a comprehensive survey of the personnel, physical, document and communications security programs relating to classified information possessed by the legislative branch. Title IX requires the Director of the FBI to conduct the survey under the guidance of congressional leadership and to report to the leadership by January 3, 1986 with recommendations for improvement of the security of classified information in the legislative branch.

Introduced 2/7/85

/s/ Bob Stump
BOB STUMP

99th Congress
1st Session

H.R. 1082

IN THE HOUSE OF REPRESENTATIVES

A BILL

To improve the effectiveness of United States intelligence activities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Omnibus Intelligence and Security Improvements Act."

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TITLE I

SEC. 101. This title may be cited as the "Recurring Intelligence Authorization Provision Codification Act".

SEC. 102. (a) Title V of the National Security Act of 1947 is amended by adding at the end thereof the following:

"CONGRESSIONAL NOTIFICATION OF EXPENDITURES
IN EXCESS OF PROGRAM AUTHORIZATIONS

"SEC. 502. During any fiscal year, funds may not be made available for any intelligence or intelligence-related activity unless such funds have been specifically authorized for such activity, or, in the case of funds appropriated for a different activity, unless the Director of Central Intelligence or the Secretary of Defense has notified the appropriate committees of Congress of the intent to make such funds available for such activity, except that, in no case may reprogramming or transfer authority be used by the Director of Central Intelligence or the Secretary of Defense unless for higher priority intelligence or intelligence-related activities, based on unforeseen requirements, than those for which funds were originally authorized, and in no case where the intelligence or intelligence-related activity for which funds were requested has been denied by Congress.".

(b) The table of contents of the National Security Act of 1947 is amended by adding after the entry for Section 501 the following:

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"Section 502. Congressional Notification of Expenditures
in Excess of Program Authorizations."

TITLE II

SEC. 201. This title may be cited as the "Intelligence or Law Enforcement
Defense Pretrial Notification Act".

SEC. 202. The Federal Rules of Criminal Procedure are amending by adding
after Rule 12.2 the following new rule:

"Rule 12.3 Notice of Intelligence or Law Enforcement Defense

"(a) Notice and Disclosure by Defendant. If the defendant intends to
raise in his defense that, at the time of the alleged offense, he was, or
believed he was, exercising the public authority of the United States on
behalf of a federal intelligence or law enforcement agency, he shall file with
the clerk and serve upon the attorney for the government a written notice
stating that he intends to raise the matter in his defense, stating the agency
or agencies on whose behalf he was, or believed he was, acting, and stating
the names and addresses of the witnesses upon whom he intends to rely to
establish the matter. The defendant shall file and serve such notice at least
twenty days prior to trial.

"(b) Disclosure by Government. Within fifteen days after service upon
the attorney for the government by the defendant of the written notice of
intention required by subdivision (a), the attorney for the government shall
file with the clerk and serve upon the defendant or his attorney a written
notice stating the names and addresses of the witnesses upon whom the
government intends to rely on the issue whether at the time of the alleged

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offense, the defendant was, or believed he was, exercising the public authority of the United States on behalf of a federal intelligence or law enforcement agency.

"(c) Continuing Duty to Disclose. If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and name and address of such additional witness.

"(d) Failure to Comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party concerning whether, at the time of the alleged offense, the defendant was, or believed he was, exercising the public authority of the United States on behalf of a federal intelligence or law enforcement agency. This subdivision shall not limit the right of the defendant to testify in his own behalf concerning whether he was, or believed he was, exercising the public authority of the United States on behalf of a federal intelligence or law enforcement agency, but if the defendant so testifies without giving the written notice of intention required by subdivision (a), the court shall recess the trial for a reasonable time to permit the government to prepare to meet the issue.

"(e) Exceptions to Time Requirements. For good cause shown, the court may allow late performance of acts required by this rule to be performed.

"(f) The provisions of this rule shall be in addition to, and shall not supersede, the provisions of the Classified Information Procedures Act (18 U.S.C. App.).".

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TITLE III

SEC. 301. This title may be cited as the "Foreign Counterintelligence Investigation Improvements Act."

SEC. 302. Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414) is amended by adding at the end thereof the following new paragraph:

"(5) (A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request pursuant to this subsection by the Federal Bureau of Investigation for financial records when such request has been approved by the Attorney General or his designee for foreign counterintelligence purposes.

"(B) Financial institutions, and officers, employees, and agents thereof, shall be immune from any civil or criminal liability for efforts to comply with a request described in subparagraph (A) of this paragraph."

SEC. 303. Section 6103(i) of title 26, United States Code is amended by adding at the end thereof the following new paragraph:

"(8) Federal Bureau of Investigation Counterintelligence Activities
-- Upon a determination by the Attorney General that there is probable cause to believe that a taxpayer is a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence

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Surveillance Act of 1978 (50 U.S.C. 1801)), the return of the taxpayer and return information which relates to such taxpayer shall, upon request for foreign counterintelligence purposes by the Federal Bureau of Investigation approved by the Attorney General, be open (to the extent of the approved request) to inspection by, or disclosure to, the Federal Bureau of Investigation."

SEC. 304. Section 204(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4304(a)) is amended by inserting "(1)" after "(a)" and adding at the end thereof the following:

"(2) Except as provided in paragraph (3) of this subsection, the Secretary shall deny to any member of a foreign mission the benefit of travel within the United States to (A) an area in which exists a substantial concentration of high-technology industry, as determined by the Secretary of Commerce, or (B) an area in which exists any industry relating to militarily critical technologies, as determined by the Secretary of Defense.

"(3) The Secretary may confer upon a member of a foreign mission the benefit of travel within the United States which would otherwise be prohibited by paragraph (2) of this subsection if the Director of the Federal Bureau of Investigation, after consultation with the Secretary of Defense and the Director of Central Intelligence, has determined and certified that such travel is clearly consistent with the national security interests of the United States.

"(4) The acts authorized or required of the Secretary and the

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Director of the Federal Bureau of Investigation by paragraph (3) of this subsection shall be done on a case-by-case basis with respect to travel by a member of a foreign mission from any state which does not routinely permit members of United States missions to that state to travel without hindrance to areas in that state similar to those described in paragraph (2) of this subsection."

TITLE IV

SEC. 401. This title may be cited as the "Federal Employee Unauthorized Disclosure of Classified Information Act".

SEC. 402. (a) Chapter 93 of title 18, United States Code is amended by adding at the end thereof the following new section:

"1924. Unauthorized Disclosure of Classified Information
by Federal Personnel -

"(a) Whoever, being an officer or employee of the United States, intentionally discloses classified information to an individual not authorized to receive classified information shall be fined \$15,000 or imprisoned for not more than three years, or both.

"(b) It shall be a defense to prosecution under this section that the defendant reasonably believed that he had lawful authority to disclose the classified information in the circumstances.

"(c) Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

"(d) For purposes of this section --

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"(1) 'authorized' means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department engaged in foreign relations, national defense, or foreign intelligence or counterintelligence activities, order of any court of the United States, or rule or resolution of the House of Representatives or the Senate;

"(2) 'classified information' has the meaning set forth in Section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

"(3) 'discloses' has the meaning set forth in Section 606(3) of the National Security Act of 1947 (50 U.S.C. 426 (3)); and

"(4) 'officer or employee of the United States' means any member of the civil service or the uniformed services as defined in section 2101 of title 5, United States Code."

(b) The table of contents of Chapter 93 of title 18, United States Code is amended by adding at the end thereof the following:

"1924. Unauthorized Disclosure of Classified Information By Federal Personnel."

TITLE V

SEC. 501. This title may be cited as the "Federal Polygraph and Prepublication Review Limitation Act".

SEC. 502. (a) Chapter 73 of title 5, United States Code is amended by adding at the end thereof the following new subchapter:

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"SUBCHAPTER VI -- POLYGRAPH EXAMINATION AND PREPUBLICATION REVIEW

"§7361. Definitions

"For purposes of this subchapter--

"(1) the term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order, or regulation or order issued pursuant thereto, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security;

"(2) the term 'polygraph examination' means an interview with a person which is conducted in whole or in part for the purpose of enabling the examiner to make an inference or a determination, by evaluation of measured and recorded physiological responses, concerning whether the person has truthfully or deceptively responded to inquiries made in such interview; and

"(3) the term 'prepublication review' means submission of information for the purpose of permitting examination, alteration, excision, or other editing or censorship prior to disclosure of the information to anyone not authorized to have access to classified information, but does not include any such submission with respect to information which is to be disclosed by a person in his official capacity.

"§7362. Limitation on Use of Polygraph Examination

"(a) Except as provided in sections 7363 and 7365 of this title, no Executive agency or military department may require, request, or represent that it may or will require or request, any person occupying, applying for, or under consideration for a position in the civil service or the uniformed services to submit to a polygraph examination.

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"(b) Except as provided in sections 7363 and 7365 of this title, no Executive agency or military department may administer, or arrange for the administration of, a polygraph examination of any person occupying, applying for, or under consideration for a position in the civil service or the uniformed services.

"§7363. Law Enforcement Use of Polygraph Examination

"An Executive agency or military department may request in writing that a person occupying, applying for, or under consideration for a position in the civil service or the uniformed services consent to a polygraph examination, and may administer or arrange for administration of such examination upon receipt of that person's written consent, if --

"(1) the examination is to be administered as part of an investigation into alleged criminal conduct constituting an offense punishable by death or imprisonment for a term exceeding one year or into an unauthorized disclosure of classified information;

"(2) means of investigation other than polygraph examination have been exhausted to the degree reasonable in the circumstances;

"(3) the person can reasonably be expected to have knowledge of importance to the investigation; and

"(4) the scope of the examination is limited to the subject matter of the investigation.

"§7364. Limitation on Prepublication Review Agreements

"Except as provided in section 7365 of this title, no Executive agency or

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military department may require, request, or represent that it may or will require or request, that any person occupying, applying for, or under consideration for a position in the civil service or the uniformed services enter into an agreement requiring prepublication review.

"§7365. Intelligence, Counterterrorism and Special Access Program Use of Polygraph Examination and Prepublication Review

"Sections 7362 and 7364 of this title shall not apply with respect to --

"(1) a person occupying, applying for, or under consideration for a position, detail or assignment in an agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333);

"(2) a person occupying, applying for, or under consideration for a position in the United States Secret Service or in the elements of the Federal Bureau of Investigation not within the Intelligence Community; or

"(3) a person occupying, applying for, or under consideration for a position in the civil service or the uniformed services, if such individual has, or will have, access to particularly sensitive classified information within special access programs created pursuant to section 4.2(a) of Executive Order 12356."

(b) The analysis for chapter 73 of title 5, United States Code is amended by adding at the end thereof the following:

"Subchapter VI - Polygraph Examinations and Prepublication Review

"7361. Definitions

"7362. Limitation on Use of Polygraph Examination

"7363. Law Enforcement Use of Polygraph Examination

"7364. Limitation on Prepublication Review Agreements

"7365. Intelligence, Counterterrorism and Special Access Program Use of Polygraph Examination and Prepublication Review".

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TITLE VI

SEC. 601. This title may be cited as the "Espionage and Treason Capital Punishment Procedures Act".

SEC. 602. (a) Title 18, United States Code is amended by adding the following new chapter after chapter 228:

"CHAPTER 228A -- ESPIONAGE AND TREASON CAPITAL PUNISHMENT PROCEDURES

"SEC.

"3591A. Definition.

"3592A. Sentence of death for espionage or treason.

"3593A. Mitigating and aggravating factors.

"3594A. Procedures for separate sentencing hearing.

"3595A. Imposition of a sentence of death.

"3596A. Review of a sentence of death.

"§3591A. Definition

"For purposes of this chapter, the term 'finder of fact' means the jury, or if there is no jury, the court.

"§3592A. Sentence of death for espionage or treason

"A defendant who has been found guilty of an offense described in section 794 or section 2381 of this title shall be sentenced to death if, after consideration of the factors set forth in section 3593A in the course of a hearing held pursuant to section 3594A, it is determined that imposition of a sentence of death is justified.

"§3593A. Mitigating and aggravating factors

"(a) In determining whether a sentence of death is justified for an

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offense described in section 3592A, the finder of fact shall consider each of the following mitigating factors and determine which, if any, exist --

"(1) the defendant was less than eighteen years of age at the time of the offense;

"(2) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(3) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(4) the defendant was an accomplice whose participation in the offense was relatively minor.

The finder of fact may consider whether any other mitigating factor exists.

"(b) In determining whether a sentence of death is justified for an offense described in section 3592A, the finder of fact shall consider each of the following aggravating factors and determine which, if any, exist --

"(1) the offense committed by the defendant directly concerned nuclear weaponry; military or intelligence spacecraft or satellites; means of defense or retaliation against large-scale attack; military operational plans; or communications intelligence or cryptographic information;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The finder of fact may consider whether any other aggravating factor exists.

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"§3594A. Procedures for separate sentencing hearing

"(a) If, in a case involving an offense described in section 3592A, the government believes that the circumstances of the offense justify a sentence of death, the attorney for the government shall, at a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, file with the court and serve on the defendant a notice stating that the government believes that the circumstances of the offense justify a sentence of death if the defendant is found guilty. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) If the attorney for the government has filed a notice as required under subsection (a) of this section and the defendant is found guilty of an offense described in section 3592A, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed.

"(c) The separate sentencing hearing required by subsection (b) of this section shall be conducted before the jury which determined the defendant's guilt, except that the hearing shall be conducted before a jury specially impaneled for the purpose of the hearing if the defendant was convicted upon a plea of guilty or after a trial before the court sitting without a jury, or if, after initial imposition of a sentence under this chapter, reconsideration of the sentence under this chapter becomes necessary.

"(d) Notwithstanding subsection (c) of this section, the separate sentencing hearing required by subsection (b) of this section shall be

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conducted before the court alone, upon motion of the defendant with the approval of the attorney for the government.

"(e) At the separate sentencing hearing required by subsection (b) of this section, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor required or permitted to be considered under section 3593A, and may include the trial transcript and exhibits. Information relevant to the sentence may be presented by both the government and the defendant regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that the court may exclude information if its probative value is substantially outweighed by the danger of unfair prejudice. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information presented.

"(f) At the conclusion of the separate sentencing hearing required by subsection (b) of this section, the finder of fact shall return a special finding as to each mitigating and aggravating factor required to be considered under section 3593A, concerning which information is presented at the hearing. If the finder of fact is a jury, it must find the existence of any mitigating or aggravating factor or factors by a unanimous vote. It shall be necessary to the imposition of a sentence of death that the finder of fact find that at least one aggravating factor required to be considered under section 3593A(b) exists.

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"(g) If the finder of fact finds, at the conclusion of the separate sentencing hearing required under subsection (b) of this section, that at least one aggravating factor required to be considered under section 3593A(b) exists, the finder of fact shall then consider whether the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors, if any, found to exist to justify a sentence of death, or, in the absence of any mitigating factor, whether the aggravating factor or factors alone suffice to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(h) In the case of a separate sentencing hearing required under subsection (b) of this section which is held before a jury, the court shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or gender of the defendant. The jury shall, in addition to returning findings as required by this section, return to the court sworn certificates of each of the jurors that consideration of the race, color, national origin, creed, or gender of the defendant was not involved in reaching juror's individual decision with respect to the findings returned.

"§3595A. Imposition of a sentence of death

"Upon a return of a finding under section 3594A(g) that a sentence of death is justified, the court shall sentence the defendant to death. In the absence of such a finding, the court shall impose any sentence other than death that is authorized by law, and, notwithstanding any other provision of law, the court may impose a sentence of life imprisonment without parole.

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"§3596A. Review of a sentence of death

"(a) In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. An appeal under this section of the sentence of death may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) In proceeding upon an appeal under subsection (a) of this section of a sentence of death, the court of appeals shall review the entire record in the case, including the information presented during the sentencing hearing, the procedures employed in the sentencing hearing, and the findings returned under section 3594A.

"(c) (1) In proceeding upon an appeal under subsection (a) of this section of a sentence of death, if the court of appeals determines that --

"(A) the sentence of death was not imposed arbitrarily; and

"(B) the information presented at the separate sentencing hearing required by section 3594A(b) supports the special finding of the existence of an aggravating factor required to be considered under section 3593A(b); it shall affirm the sentence, and in any other case the court of appeals shall vacate the sentence of death and remand the case for reconsideration of sentencing.

"(2) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section."

(b) Title 18, United States Code is amended by adding the following new item after the item relating to chapter 228 in the chapter analysis of part II:

"228A. Espionage and Treason Capital Punishment Procedures.....3591A."

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(c) The provisions of chapter 228A of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

TITLE VII

SEC. 701. This title may be cited as the "Foreign Intelligence Source Improvement Act".

SEC. 702. Section 7 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403h) is amended by inserting "(a)" after "SEC. 7." and adding at the end thereof the following new subsection--

"(b) (1) The President may, notwithstanding any other law, naturalize as a citizen of the United States an alien admitted to the United States for permanent residence pursuant to subsection (a) of this section if--

(A) the Attorney General determines and certifies to the President that the alien is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and

(B) the President finds that the foreign intelligence activities of the alien on behalf of the United States have contributed substantially to the security of the United States, except that in no case shall the number of aliens naturalized in any fiscal year pursuant to this subsection exceed five.

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"(2) Prior to naturalization under paragraph (1) of this subsection, an alien to be naturalized under such paragraph shall, before an officer of the executive branch designated for the purpose by the President, take the oath of renunciation of former citizenship and acceptance of allegiance to the United States required of an alien naturalized under other provisions of law.

"(3) Notwithstanding any other law, a district court of the United States, upon application of the Attorney General under this subsection, shall, in a manner consistent with the protection of intelligence sources, methods and activities, issue or cause to be issued such documents relating to an alien naturalized by the President under this subsection as are issued relating to an alien naturalized under other provisions of law, and such documents relating to an alien naturalized by the President shall have the same legal effect as documents issued relating to an alien naturalized under other provisions of law.

"(4) The President may not delegate the authority granted in paragraph (1) of this subsection, anything in section 301 of title 3, United States Code to the contrary notwithstanding.

"(5) The President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate each time the authority granted in paragraph (1) of this subsection is exercised."

TITLE VIII

SEC. 801. This title may be cited as the "Intelligence Identities Protection-Related Amendments".

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SEC. 802. Section 8312(c) (1) (C) of title 5, United States Code is amended by striking the period at the end thereof and inserting lieu thereof "or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).".

SEC. 803. Section 2516(1) (a) of title 18, United States Code is amended by striking the first comma and inserting in lieu thereof ", section 601 of the National Security Act of 1947 (relating to intelligence identities),".

TITLE IX

SEC. 901. This Act may be cited as the "Foreign Intelligence Surveillance Amendments".

SEC. 902. Section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)) is amended by striking "twenty-four hours" each time it appears and inserting each time in lieu thereof "forty-eight hours".

SEC. 903. (a) Section 105 (f) (1) (C) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805 (f) (1) (C)) is amended by striking the semicolon and inserting in lieu thereof ", except that, with the approval of the Attorney General or his designee, the contents may be retained and disseminated if they consist of information which indicates a threat of death or serious bodily harm to any person;".

(b) Section 105 (f) (2) (C) of the Foreign Intelligence Surveillance Act of

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1978 (50 U.S.C. 1805 (f) (2) (C)) is amended by striking the semicolon and inserting in lieu thereof ", except that, with the approval of the Attorney General or his designee, the information may be retained and disseminated if it indicates a threat of death or serious bodily harm to any person;".

SEC. 904. (a) Title II of the Foreign Intelligence Surveillance Act of 1978 is amended by adding at the end thereof the following new section:

"RELATIONSHIP TO CHAPTER 119 OF TITLE 18, UNITED STATES CODE

"SEC. 202. Whenever, in a particular situation, the United States could obtain an order for interception of wire or oral communications under chapter 119 of title 18, United States Code or an order for electronic surveillance under this Act, the United States may proceed under either statute, or both."

TITLE X

SEC. 1001. This title may be cited as the "Congressional Security Survey Act".

SEC. 1002. Subject to the guidance of the Speaker and Minority Leader of the House of Representatives with respect to the House of Representatives, and subject to the guidance of the Majority and Minority Leaders with respect to the Senate, the Director of the Federal Bureau of Investigation, in cooperation with such federal agencies as he deems appropriate, shall conduct a comprehensive survey of the personnel, physical, document and communications

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security arrangements relating to classified information available to Members of Congress and employees of the legislative branch and report to the Speaker and Minority Leader of the House of Representatives, and the Majority and Minority Leaders of the Senate, by January 3, 1986 with recommendations for improvement of such arrangements.

SEC. 1003. All federal departments, agencies and instrumentalities are authorized and directed to provide such assistance to the Director of the Federal Bureau of Investigation as he may deem appropriate to carry out the provisions of Section 1002.

SEC. 1004. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.